

**CHARLES L. FIRESTEIN, P.C.**

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Attorney for Movant AMERICAN HONDA FINANCE CORPORATION ("AHFC")

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

**IN RE:**

**ELIZABETH ANN HARKISON,**

**Debtor,**

**AMERICAN HONDA FINANCE  
CORPORATION ("AHFC"), its  
assignees and/or successors in  
interest,**

**Movant,**

**vs.**

**ELIZABETH ANN HARKISON,  
DEBTOR; MAUREEN GAUGHAN,  
TRUSTEE,**

**Respondents.**

**CHAPTER 7 PROCEEDINGS**

**CASE NO: 2:11-bk-26980-RTB**

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

COMES NOW, AMERICAN HONDA FINANCE CORPORATION ("AHFC"), its assignees and/or successors in interest (Movant), hereby moves and applies to the court for an order modifying the stay provided by 11 U.S.C. § 362 and the other stays against lien enforcement with respect to the property described below, and proceeds; and enjoining or conditioning the use, sale, or lease of such property, as necessary to provide adequate protection of Movant's interest in the property.

The relief requested is more particularly set forth in the following memorandum of

1 points and authorities, upon which this motion and application is based.

2 RESPECTFULLY SUBMITTED this January 9, 2013.

3 CHARLES L. FIRESTEIN, P.C.

4  
5 /s/ Charles L. Firestein #002986

6 Charles L. Firestein, Esq.  
7 Attorney for Movant

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **FACTS:** The facts relevant to Movant's Motion for Relief from the Automatic Stay  
10 are summarized as follows:

11 1. The Debtor originally filed a Chapter 7 Bankruptcy under the Bankruptcy  
12 Code on September 21, 2011.

13 2. On or about November 7, 2009, said Debtor entered into a Motor Vehicle  
14 Retail Installment Sales Contract and Purchase Money Security Agreement with Movant  
15 for the purchase of a 2007 HONDA PILOT LX, vehicle ID# 5FNYP18107B005991  
16 (collateral) (See Exhibit "A" attached hereto).

17 3. Said Motor Vehicle Retail Installment Sales Contract and Purchase Money  
18 Security Agreement was assigned to Movant which thereupon filed and perfected its  
19 liens on the collateral described herein by noting said lien on the Title (See Exhibit "B"  
20 attached hereto).

21 4. At the time of filing the Petition for Relief the Debtor was indebted to  
22 Movant in the amount of \$19,121.77, and at present owes Movant for missed payments,  
23 the sum of \$671.99. The value of the collateral is approximately \$14,975.00. As such,  
24 after taking into account the cost of retaking, reconditioning, selling, attorney fees, etc.,  
25 there is no equity in this collateral for either the Debtor or the Estate.  
26  
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1           5.     The Debtor is delinquent on the accounts since November 22, 2012 and  
2 there has been no offer of adequate protection to Movant to protect the value of the  
3 collateral. Furthermore, the Debtor has no equity in said collateral and because this is  
4 not a Chapter 11 or Chapter 13, the requirement that the collateral is necessary for an  
5 effective reorganization is inapplicable. The Debtor has received his/her discharge and  
6 the Automatic Stay has been vacated as to him/her . AMERICAN HONDA FINANCE  
7 CORPORATION ("AHFC") is seeking to have the Stay lifted against the Estate's interest  
8 insofar as this matter is still open.  
9

10           6.     Movant has incurred, or may incur, certain costs, including, without  
11 limitation, attorney fees, taxes, insurance premiums, court costs, costs of sale, and  
12 other costs, all of which are secured by the subject Motor Vehicle Retail Installment  
13 Sales Contract and Purchase Money Security Agreement.  
14

15 LAW:

16 (A) AUTOMATIC STAY:

17           Pursuant to 11 U.S.C. § 362(d) Movant is entitled to relief from the Automatic  
18 Stay to enforce its lien on either of two grounds: (1) for cause including lack of adequate  
19 protection of an interest in the Property, or (2) the Debtor has no equity and the Property  
20 is not necessary to any effective reorganization. Implicit in the second of these is that,  
21 unless a reorganization is contemplated and feasible, a creditor is entitled to relief from  
22 the automatic stay if the Debtor has no equity in the Property. E.G., Frankford Trust  
23 Company v. Dublin Property, (In re Dublin Properties), 4 C.B.C. 2d 885, 889 (E.D. Pa.,  
24 Bankr., 1981).  
25  
26

27           On only one issue does a Movant requesting relief from the stay have the burden  
28 of proof and that is the issue of the Debtor equity in the Property. On all other issues

1 any party opposing relief has the burden of proof. 11 U.S.C. § 362(g). Unless a party  
2 opposing relief produces evidence on these points, a Movant is entitled to relief without  
3 presenting any evidence whatsoever. See Gauvin v. Wagner (In re Gauvin), 8 C.B.C. 2d  
4 359, 361, 10 BCD 219, 24 B.R. 578 (9th Cir BAP 1982). Moreover, if a party opposing  
5 relief alleges that an "equity cushion" furnishes adequate protection, then that party  
6 must produce evidence and carry the burden of proof even on the issue of equity. Id.

7  
8 (B) PRELIMINARY HEARING:

9 As noted above, any party resisting relief from the automatic stay or seeking to  
10 use property of the estate must carry the burden of proof on the issue of adequate  
11 protection. A party requesting relief from the stay receives it automatically 30 days after  
12 the date of its request unless the Court after notice and hearing orders the stay  
13 extended. 11 U.S.C. § 362(e). Moreover, at a preliminary hearing on a request to lift the  
14 stay, the Movant is entitled to relief unless the party resisting relief presents evidence  
15 and the Court finds that there is a "reasonable likelihood" the resisting party "will prevail  
16 at the final hearing." 11 U.S.C. § 363(c)(3) and § 362(e)(1). See Dublin Properties, 4  
17 C.B.C. 2d at 889.

18  
19  
20 REQUEST FOR RELIEF:

21 For the reasons set forth above, Movant respectfully requests:

22 1. That all stays, including without limitation, injunctions, restraining orders,  
23 and the automatic stays provided by 11 U.S.C. §362 and §524, be vacated with respect  
24 to the Property, or modified to permit Movant, or its agents, attorneys, employees and  
25 assigns and such other persons as the Court shall deem appropriate to take any and all  
26 actions to enforce its claim to and assert its ownership rights to the Property under the  
27 subject Contract, and non-bankruptcy law, including without limitation the rights: to  
28

1 declare all sums to be immediately due and payable; and to obtain possession of the  
2 property, either through self-help or an action in any Court of competent jurisdiction.

3       2.Movant is also requesting that the Court allow Movant to immediately secure its  
4 collateral/property without having to wait ten days from the date of this Order as  
5 otherwise required under Rule 7062. Good cause exist for this insofar as the property  
6 which is in question is both depreciable and mobile and there is always concern by  
7 Movant with reference to this type of property concerning the continued use by the  
8 Debtor when payments are not being made. Movant has no objection to waiting ten  
9 days with reference to the sale after entry of Order.  
10

11 **CONCLUSION:**

12  
13       For the reasons set forth herein, Movant requests entry of an Order Modifying  
14 Stays against lien enforcement; and granting such other and further relief as is just.

15       RESPECTFULLY SUBMITTED this January 9, 2013.

16       **CHARLES L. FIRESTEIN, P.C.**

17  
18       /s/ Charles L. Firestein #002986  
19       Charles L. Firestein, Esq.  
20       Attorney for Movant  
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STOCK RETAIL INSTALLMENT SALE CONTRACT SIMPLE FINANCE CHARGE

DEALER: 586626 Dealer Number: \_\_\_\_\_ Contract Number: \_\_\_\_\_

Buyer Name and Address (including County and Zip Code): ELIZABETH A MARKISON PO BOX 51873 MESA, AZ 85208

Co-Buyer Name and Address (including County and Zip Code):

Credit/Seller Name and Address: SHOWCASE HONDA 500 E. CAMELBACK ROAD PHOENIX, AZ 85014

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreement on the front and back of this contract. You agree to pay the Credit - Seller (hereinafter "net" or "net" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will sign your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New/Used/Other: USED Year: 2007 Make and Model: HONDA PILOT Owner: 85732 Vehicle Identification Number: 5FNRF1812800599 Primary Use For Which Purchased: ☒ Personal, family or household ☐ Business ☐ Agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
6.99 %	\$ 5047.56	\$ 26206.90	\$ 32254.56	\$ 32454.56

Your Payment Schedule With Us:

Number of Payments	Amount of Payments	When Payments Are Due
72	\$447.98	Monthly beginning 12/22/2009

Or As Follows: \_\_\_\_\_

Late Charge: If payment is not received in full within 10 days after it is due, you will pay a late charge of \$15.00 or 3% of the part of the payment that is late, whichever is less. If the vehicle is purchased for commercial use, the late charge will be 5% of the part of the payment that is late.

Security Interest: You are giving a security interest in the vehicle being purchased.

Arbitration Information: See the contract for more information including information about negotiation, default, any required payment in full before the scheduled date and security interest.

RECAPITULATION OF AMOUNT FINANCED

1. Cash Price: \$ 21028.90

2. Sales Tax: \$ 1745.40

3. Other Charges Including Amounts Paid to Others on Your Behalf: \$ 0.00

4. Total Cash Price (A through F): \$ 22774.30

5. Total Downpayment: \$ 0.00

6. Total Other Charges and Amounts Paid to Others on Your Behalf: \$ 3532.60

7. Amount Financed (D + G): \$ 26206.90

OPTION: ☐ You pay no finance charge if the Amount Financed, Item 5, is paid in full on or before \_\_\_\_\_.

FOR USED VEHICLES ONLY

The Seller hereby warrants that this vehicle will be fit for the ordinary purposes for which the vehicle is used for 15 days or 500 miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the purchaser) will have to pay up to \$25.00 for each of the first two repairs if the warranty is violated.

ATTENTION PURCHASER: SIGN HERE ONLY IF THE DEALER TOLD YOU THAT THIS VEHICLE HAS THE FOLLOWING PROBLEM(S) AND THAT YOU AGREE TO BUY THE VEHICLE ON THOSE TERM(S):

ATTENTION CO-BUYER: FIRMAR AQUÍ SOLAMENTE SI EL VENDEDOR LE HA DICHO QUE EL VEHÍCULO TIENE EL SIGUIENTE PROBLEMA(S) Y QUE USTED ESTÁ DE ACUERDO DE COMPRAR EL VEHÍCULO BAJO ESTOS TÉRMINOS:

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

Buyer Signs: \_\_\_\_\_ (Date) \_\_\_\_\_ Co-Buyer Signs: \_\_\_\_\_ (Date) \_\_\_\_\_

WARRANTIES

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties on the vehicle, except as described above for used vehicles. Making no warranties means that the Seller is selling the vehicle as is - not expressly warranted or guaranteed and without any implied warranties of merchantability (except as described above) or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

IF THE BOX IS CHECKED, THIS CONTRACT IS SUBJECT TO A BROKER FEE PAID BY THE SELLER TO \_\_\_\_\_

NO COOLING OFF PERIOD

Sale law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply in home solicitation sales.

You acknowledge an express intent to grant a security interest in the vehicle and hereby waive and abandon all personal property exemptions granted upon the vehicle, which is the subject of this contract. NOTICE: BY GIVING US A SECURITY INTEREST IN THE VEHICLE, YOU WAIVE ALL RIGHTS PROVIDED BY LAW TO CLAIM SUCH PROPERTY EXEMPT FROM PROCESS.

HOW THIS CONTRACT CAN BE CHANGED: This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs: \_\_\_\_\_ Co-Buyer Signs: \_\_\_\_\_

NOTICE TO THE BUYER: (1) Do not sign this contract before you read it or if it contains any blank spaces. (2) You are entitled to an exact copy of the contract you sign.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract, and retain its right to receive a part of the Finance Charge.

YOU ACKNOWLEDGE THAT YOU HAVE READ BOTH SIDES OF THIS CONTRACT, INCLUDING THE ARBITRATION CLAUSES ON THE REVERSE SIDE, BEFORE SIGNING BELOW.

You agree to the terms of this contract. ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE LIABILITY COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS.

The Arizona Department of Financial Institutions regulates the Seller and can be contacted at 2810 North 44th Street, Suite 310, Phoenix, Arizona 85018, (602) 255-4421. If you have any complaints concerning this contract.

Buyer Signs: \_\_\_\_\_ 11/02/2009 SHOWCASE HONDA 11/02/2009

Co-Buyer Signs: \_\_\_\_\_

SEE BACK FOR OTHER IMPORTANT TERMS AND AGREEMENTS.

Co-Buyer and Other Owners - A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here: \_\_\_\_\_ Date: \_\_\_\_\_ Address: \_\_\_\_\_

Seller assigns its interest in this contract to: ☒ Assigned with recourse ☐ Assigned without recourse ☐ Assigned with limited recourse

## 1. FINANCE CHARGE AND PAYMENTS

## 1. FINANCE CHARGE AND PAYMENTS

- ## 2. YOUR OTHER PROMISES TO US

2. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only if the "personal, family or household" box in the "Primary Use for Which Purchased" section of this contract is checked. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

The undersigned, jointly and severally, guaranteed payment of all amounts owing under this contract and the plaintiff's upward demand of the entire amount owing on this contract in the event of default in payment of the amounts due. The undersigned waived notice of performance, demands for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Guaranty, of any application in force in payment of, or sale of any of the collateral and of all other releases to which the undersigned would be otherwise entitled by law and agrees to pay all amounts due thereunder upward demand, without releasing any person or proceeding against Buyer, and specifically waives its right to require notice against Buyer as provided in A.R.T. §§ 18-1841 of the State of Tennessee. The undersigned agrees to assign to the plaintiff all financial assets and any other assets of the undersigned, and agrees to execute all documents and take all actions necessary to carry out the financial condition as may be reasonably required. The undersigned agrees to execute and deliver to the plaintiff a promissory note in the form attached as Exhibit A to this Guaranty, or in a separate "Note to A.R.T. § 18-1841".

\_\_\_\_\_ **CHIEF**

**QUESTIONS**

**Marital Community Property Jointor:** The undersigned spouse of the Grantor joins in the execution of this guaranty for the purpose of binding the marital property of the Grantor and the undersigned, in accordance with A.R.S. § 25-214 or other applicable law. **THE UNDERSIGNED SPOUSE OF THE GRANTOR ACKNOWLEDGES RECEIPT FROM THE GRANTOR OF THIS INSTRUMENT PRIOR TO SIGNING BELOW OF A SEPARATE "NOTICE TO CO-SIGNER."**

Date \_\_\_\_\_

### **Espouse of the Guarantor**

**PLEASE REVIEW. IMPORTANT - AFFECTS YOUR LEGAL RIGHTS**

- [illegible]

# ARIZONA CERTIFICATE OF TITLE



**Motor  
Vehicle  
Division**

602-7200-61005 www.azdot.gov

Inventory Control  
**15530421**

Vehicle Identification Number

**5FNYF18107D005901**

Year

**2007**

Make

**HOND**

Model

**POX**

Body Style

**4DSW**

First Registered

**02/2007**

List Price

**028395**

Mobile Home Manufacturer

Unit Number

**AMERCN HONDA FIN CORP**

**P O BOX 997500**

**SACRAMENTO CA 95899-7500**

Title Number

**045H009349056**

Issue Date

**12152000**

Film Number

**J3400451126**

Odometer Miles (no dashes) \*

**0036732 A**

Previous Title Number

**66AK009017010**

State

**AZ**

Issue Date

**01172000**

Previous Film Number

**J0176CAK05**

\* A - Actual Mileage  
B - Mileage in excess of the odometer mechanical limit  
C - NOT Actual Mileage, WARNING ODOMETER DISCREPANCY

Arizona Brands

Previous Brand

State Previous Brand

State Previous Brand

State Other States With Brands

**ADDITIONAL BRAND INFORMATION WILL BE PRINTED HERE IN THE FUTURE.**

Owner/Lessee

**ELIZABETH A HARKISON**

**PO BOX 51873**

**MESA**

**AZ 852080091**

Lienholders

**FIRST LIEN-**

**AMERCN HONDA FIN CORP**

**P O BOX 997500**

**LIEN DATE: 11072000**

**SACRAMENTO**

**CA 958997509**

**LIEN RELEASE**

Lienholder Name		Acknowledged before me this date.		Notary Public Signature	
Lien Amount	Lienholder Signature	Date	County	State	Commission Expires

**VOID WITHOUT EAGLE WATERMARK OR IF ALTERED OR ERASED**